

**TO BE CONSIDERED BY THE CITY COUNCIL  
CITY OF KERRVILLE, TEXAS**

**SUBJECT:** Authorization for the City Manager to execute a contract with Kerrville Kayak and Canoe to operate non-motorized watercraft concessions at Louise Hays Park.

**FOR AGENDA OF:** February 23, 2010

**DATE SUBMITTED:** February 11, 2010

**SUBMITTED BY:** Malcolm Matthews  
Director of Parks and Recreation

**CLEARANCES:** Kristine Ondrias  
Assistant City Manager

**EXHIBITS:** Contract

**AGENDA MAILED TO:**

**APPROVED FOR SUBMITTAL BY CITY MANAGER:**

<b>Expenditure</b>	<b>Current Balance</b>	<b>Amount</b>	<b>Account</b>
<b>Required:</b>	<b>in Account:</b>	<b>Budgeted:</b>	<b>Number:</b>
\$0	\$0	\$0	N/A

**PAYMENT TO BE MADE TO:** N/A

**REVIEWED BY THE FINANCE DIRECTOR:**

**SUMMARY STATEMENT**

The Kerrville Kayak and Canoe License Agreement, contract No. 2006-62 for boat, tube, and raft concessions in Louise Hays Park, expired on November 8, 2009. Kerrville Kayak and Canoe ("KK&C"), a local business, successfully provided non-motorized concessions under the previous agreement. KK&C also provides the same concession services in Kerrville-Schreiner Park under a separate license agreement with the City of Kerrville. That license agreement, when renewed in 2008, implemented several safety and accountability improvements which will be required under the new agreement in Louise Hays Park, as well. The operational improvements include use of appropriate safety training and equipment, requirement for employees to wear uniforms and name tags, increase of insurance limits to \$1 million for all categories, and the requirement for daily income log sheets to be submitted with corresponding monthly payments to the City.

The proposed concessions agreement for Louise Hays Park includes a three year term with an option to renew for an additional three years. The licensee will pay the City 8% of gross sales, or \$100 per month, whichever is greater. No payment is required to be paid to the City if the licensee does not operate during any given month. The licensee operates from March through October and the City of Kerrville receives generally \$400.00.

### **RECOMMENDED ACTION**

The Director of Parks and Recreation recommends the City Council authorize the City Manager to execute a contract with Kerrville Kayak and Canoe to operate non-motorized watercraft concessions at Louise Hays Park.

**LICENSE AGREEMENT BETWEEN KERRVILLE KAYAK & CANOE**  
**AND**  
**CITY OF KERRVILLE**  
**FOR OPERATION OF BOAT, TUBE AND RAFT CONCESSION**

This License Agreement ("License") is made and entered into by and between the CITY OF KERRVILLE, TEXAS ("City"), and KERRVILLE KAYAK & CANOE, herein referred to as "Licensee" or "KK&C", as follows:

1. **Grant of License.** In consideration of and subject to the terms, provisions and covenants herein contained, City hereby grants to Licensee an exclusive license to operate a business of non-motorized watercraft rentals on the following described real property owned by City, together with all improvements thereon, in the City of Kerrville, Kerr County, Texas, to-wit:

Approximately twenty-five (25) feet by one hundred (100) feet on the south side of the Guadalupe River in a location within Louise Hays Park that is mutually agreed upon by the City and KK&C ("Licensed Premises").

2. **Term.** This License shall become effective upon the date the signatures of the representatives of all of the parties to this License are affixed hereto and shall terminate three (3) years thereafter ("Initial Term"), subject to renewal or earlier termination as herein provided.

3. **Renewal.** Not later than ninety (90) days prior to the end of the term, the parties agree to commence negotiations in good faith for a renewal term not exceeding three (3) years and upon such conditions and provisions as the parties may agree. Any such renewal shall provide a percentage license fee and minimum license at least on the same terms as this License. If no renewal agreement is entered into prior to the end of the term, this License shall expire and terminate and be of no force and effect provided that Licensee is not in default hereunder.

4. **Termination Election.** City and Licensee each shall have the right, either with or without cause, to terminate this License upon not less than thirty (30) days prior written notice to the other party. Upon such termination, City and Licensee shall be relieved of all further obligations hereunder except only for obligations accruing prior to the effective date of termination.

5. **Use.** Licensee shall continuously use the Licensed Premises and all improvements thereon for non-motorized watercraft rental, and for no other purpose. Licensee shall at all times comply with the Texas Water Safety Act (Texas Parks & Wildlife Code Chapter 31, as amended). No motorized watercraft of any kind shall be rented. No other use of the Licensed Premises may be made without the prior written consent of City.

6. **Water Access.** It is understood and agreed that Licensee shall have access to all water areas impounded by the Louise Hays Park dam. Licensee shall maintain the Licensed Premises as much in keeping with the natural surrounding as possible. So long as no default exists

hereunder, Licensee shall be the exclusive kayak, canoe, paddle boat and inner tube vendor in Louise Hays Park, but Licensee shall not have exclusive or any right of refusal on concessions or on other similar or dissimilar arrangements for other business activities, recreational or otherwise.

7. Interruption of Business. City shall not be liable or responsible to Licensee in any manner for any interruption, or adverse impact on, Licensee's business as a result of casualty, flooding, acts of God, utility failure, or other occurrence. In the event of flooding or other act of God that impairs Licensee's access to the Licensed Premises or Licensee's operations hereunder, City agrees to exercise reasonable efforts to restore access to the Licensed Premises, but City shall not be responsible for failure to restore access within any particular period of time. Further, Licensee shall not be entitled to any abatement of license fees or any other off-set as a result of any such interruption or adverse impact or any delay or failure by City to restore access by the public to the Licensed Premises.

8. Maintenance. Licensee shall, at Licensee's cost and expense, during the term of this License and any renewal thereof, maintain the equipment, Licensed Premises and all improvements thereon, in a first-class manner, including but not limited to maintaining the premises free from litter and debris.

9. Signs. Licensee shall provide three (3) removable signs, each no larger than 32 square feet, identifying the business and stating that watercraft rentals are available at the location, stating hours of operation and pricing, and listing safety guidelines. The signs shall be and remain the property of Licensee. Licensee shall be responsible for maintenance of the signs and replacement if the same are damaged or destroyed. No signs other than those described herein may be erected at the Licensed Premises unless approved in writing by the City prior to installation. Placement and design of all signs shall be subject to prior approval by the City.

10. Insurance. Licensee agrees to acquire and maintain in force and effect, during the term hereof, workers' compensation insurance and also liability and casualty insurance covering all dates when Licensee is in operation on the Licensed Premises. Upon execution of this License, Licensee shall provide City with a copy of the insurance policies required hereby, showing premium prepaid for the period covered. In the event of failure by Licensee to keep such insurance in effect, the License shall terminate without notice from City to Licensee.

This insurance shall include liability and workers' compensation coverage as follows:

<u>Type of Insurance</u>	<u>Minimum Limits</u>
A. Workers' Compensation covering all employees	Statutory
B. Employer's Liability	\$100,000.00

C. Commercial General Liability

- Bodily Injury & Property Damage  
Per Occurrence \$1,000,000.00
- Aggregate \$1,000,000.00

(Premises/Operations, Products/Completed, Operations/Independent, Contractors/Contractual Liability/Water Craft/Property Entrusted to Others/Coverages shall be included.)

Any structures or buildings constructed or owned by Licensee shall be insured against damage by fire, windstorm or other casualty under the standard "extended coverage" insurance. Prior to commencement of any construction, Licensee shall furnish City a duplicate original of an extended coverage insurance policy naming City as "additional insured" with "all-risk builder's risk" coverage if required by City. Such insurance shall insure both City and Licensee against loss by fire, windstorm, vandalism, theft or other casualty covered under standard "extended coverage" insurance. Such policy shall be in the amount of full replacement value for all improvements.

The commercial general liability and casualty insurance policies shall name City as an "additional insured". All policies shall include a waiver of subrogation provision in favor of City. The policy and any renewal certificate shall provide that the City be notified thirty (30) days prior to cancellation or modification of any coverage. Language to the effect that the insurance company will "endeavor" or "attempt" to so notify the City is not sufficient. Renewal certificates must be received by the City at least ten (10) days prior to expiration date. Policies will be in effect for the entire term of this License and any renewals. It shall be the responsibility of the Licensee to insure that all subcontractors for improvements comply with the same insurance requirements as the Licensee.

11. Alterations and Improvements. Licensee shall have the right, after first obtaining the written consent of City and at Licensee's sole cost and expense, to make such alterations, additions and improvements to the Licensed Premises as Licensee may desire and as may have been approved by City. All such alterations, additions and improvements shall thereafter constitute part of the Licensed Premises and shall not be removed by Licensee upon the termination or expiration of this License or any renewal hereof, except that the Licensee may remove such alterations, additions and improvements provided that Licensee shall restore the Licensed Premises to the condition existing on the date hereof. Any improvements not removed within thirty (30) days after expiration or termination of this License shall remain with the land.

12. Access. City shall have free access to the Licensed Premises at all reasonable times for the purpose of inspection of the same or for any maintenance or repairs allowed to be made by City hereunder.

13. Termination for Safety Violation or Unlawful Use. Licensee shall not use or occupy nor permit the Licensed Premises or any part thereof to be used or occupied for any unlawful purpose, or for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. Licensee shall comply with all laws, ordinances, orders, rules and

regulations of state, federal, municipal or other agencies or bodies having any jurisdiction thereof relating to the use, condition or occupancy of the Licensed Premises. Notwithstanding any other provision of this License, any violation of this provision, or a gross violation of any safety-related provision herein, shall entitle the City to terminate this License immediately.

14. **INDEMNIFICATION.** LICENSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY HARMLESS OF AND FROM ALL CLAIMS, DEMANDS, LIABILITY, LOSS, COST AND EXPENSE (INCLUDING ATTORNEY'S FEES AND COST OF LITIGATION) IN ANY MANNER ARISING OUT OF OR RESULTING FROM LICENSEE'S OPERATIONS, LICENSEE'S USE OF THE LICENSED PREMISES OR THE EXISTENCE OF LICENSEE AND LICENSEE'S IMPROVEMENTS AND PERSONALTY ON THE PREMISES, INCLUDING BUT NOT LIMITED TO ANY AND ALL LIABILITY, LOSS, COST AND EXPENSE ARISING FROM CLAIMS OR DEMANDS BY LICENSEE'S OWN EMPLOYEES; AND THESE INDEMNITY AND HOLD HARMLESS PROVISIONS SHALL APPLY AND EXTEND TO ANY CLAIM, DEMAND, LIABILITY, LOSS, COST OR EXPENSE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY OR ITS OFFICIALS, AGENTS, SERVANTS OR EMPLOYEES.

15. **Assignment or Sublicense.** Licensee shall not assign or sublicense the Licensed Premises or any of its rights hereunder, in whole or in part, without the express prior written consent of the City.

16. **Casualty.** In the event of casualty, Licensee shall restore all damaged improvements within thirty (30) days thereafter. Insurance proceeds will be made available for such repairs.

17. **Performance by City.** If Licensee fails to perform its obligation, City may (at its option) perform such obligations and Licensee shall pay to City upon demand all costs and expenses incurred by City.

18. **Independent Contractor.** This License constitutes the entire agreement between City and Licensee. Nothing contained herein shall be construed to create any principal/agent, employer/employee, joint venture, partnership or other arrangement between City and Licensee. Licensee shall at all times be an independent contractor and shall maintain full control over the means of conducting the business operations permitted hereby, provided such means are consistent with the provisions of this Agreement.

19. **Default.** If either party hereto shall fail to perform any obligation of such party as herein set forth, and such failure shall continue for a period of ten (10) days after written notice of default (except for Licensee's insurance obligations or obligation to pay the License fee, for which no notice or opportunity to cure shall be given) the party not in default shall have the right, at such party's option, and in addition to any other remedies available at law or in equity, to terminate this License by notice to the party in default. The failure of either party to declare any default immediately upon the occurrence thereof or delay in taking any action in connection therewith shall

not waive such default, but such party shall have the right to declare any such default at any time and take such action as might be authorized hereunder or that may be available at law or in equity.

20. Notice. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States mail, postage prepaid, or certified mail, return receipt requested, addressed to the parties hereto at their respective addresses as set forth below or at such other address as they have heretofore specified by written notice delivered in accordance with the terms hereof:

City: City of Kerrville, Texas  
Attention: Director of Parks and Recreation  
800 Junction Highway  
Kerrville, Texas 78028

Licensee: Kerrville Kayak & Canoe  
Attention: Corey Miller  
130 W. Main Street  
Kerrville, Texas 78028

21. Operating Hours. Minimum hours of operation shall be from 12:00 noon until one (1) hour before sunset on Wednesdays through Fridays, and from 9:00 a.m. until one (1) hour before sunset on Saturdays and Sundays, except when prevented by inclement weather or when otherwise agreed between the Licensee and the City. Licensees shall be open during the period of the Agreement from the Friday before Memorial Day through Labor Day. Licensee shall also operate during Spring Break and Easter weekend, and as agreed between Licensee and Director of Parks and Recreation. Licensee shall also operate on all holidays and any other days and times which in the opinion of Licensee and Director of Parks and Recreation are appropriate and not in conflict with maintenance of Louise Hays Park.

22. Training and Orientation. Licensee will conduct two (2) training and orientation sessions for up to two classes of youth using licensee's equipment. Sessions will be scheduled at least two weeks in advance and will not be scheduled on City-recognized holidays.

23. Restraining Devices. Licensee shall, at Licensee's expense, place physical restraining devices (e.g. cables and/or boundary markers) as deemed necessary by Licensee for safety purposes and control of water activities, subject to prior approval by City and only on property of City or upon water surfaces abutting property of City. Any such devices shall be in accordance with all applicable laws, rules and regulations of state, federal or local governing authority, and shall be arranged such that the restraining devices do not cause abrasion or other physical damage to trees or fixtures.

24. Uniforms. Licensee shall require its employees to wear company uniforms and name tags while on duty. At a minimum, the combination of uniforms and name tags shall include the Licensee's name and the employee's full legal name.

25. Safety Assurances. Licensee agrees that at all times its employees and customers will be adequately supervised in order to maintain the safety of the public. Licensee agrees to provide all safety equipment, personnel and procedures to comply with all water safety rules and regulations as required by state and local laws and regulations. Licensee agrees to abide by the Texas Water Safety Act at all times. Licensee agrees to provide customers with U.S. Coast Guard approved personal flotation devices ("PFD's"). Licensee agrees that it will not rent watercraft to any customers unless each such customer agrees in writing to be bound to the following provisions:

- All persons utilizing rented watercraft shall abide by all state and local laws;
- No one under the age of sixteen (16) may rent or utilize any rented watercraft unless accompanied by and/or directly under the continuous supervision of a responsible adult;
- No person shall be permitted to occupy or utilize any rented watercraft without a signed waiver of any claim against Licensee and City, which waiver shall include an agreement to hold the parties harmless for any property damage or personal injury related directly or indirectly to Licensee's watercraft rental business;
- No bottled or canned drinks may be carried or consumed while using rented watercraft;
- All persons shall wear the PFD's provided by Licensee at all times while occupying any rented watercraft;

26. License Fee. Licensee shall pay City a License fee as follows: Licensee shall pay to the City one hundred dollars (\$100.00) per month or eight percent (8%) of its gross revenues, whichever is greater. Should Licensee provide operations in less than a full month, Licensee shall pay the City the greater of one hundred dollars (\$100.00) or eight percent (8%) of its gross revenue for the period of time during which operations were on-going. In no event, however, shall Licensee be required to pay any fee to the City under this provision if Licensee does not operate on City property at all in a given month. Licensee shall pay the City on or before the 5<sup>th</sup> working day of each month for revenues received for the prior month, and late fees shall accrue thereafter at five dollars (\$5.00) per day on all unpaid amounts. For purposes of this License, the term "gross revenue" shall mean all monies received or payments made by check or credit card for services provided by Licensee to customers pursuant to this License, excluding that portion of collections which represents local or state sales taxes.

27. Method of Payment. All License fee payments will be made to City at the City's Parks and Recreation Department headquarters, 2385 Bandera Highway, Kerrville, Kerr County, Texas, or such other place as City may designate, without deduction, set-off, prior notice or demand.

28. Accounting and Records. Licensee shall close its books by the last day of each month. Licensee's books, including income, sales and other tax returns and reports, shall be maintained for not less than one (1) year and shall be subject to City's inspection at all reasonable times and for twelve months following the termination of this License. A copy of daily income log sheets shall be turned in with the corresponding monthly payments. Licensee shall provide a copy of its daily income log sheets to City with the monthly payment.



29. Rental Rates. Licensee shall charge its customers the following user fees for its services hereunder for the remainder of 2010:

<u>Watercraft</u>	<u>Per Hour</u>	<u>or</u>	<u>½ day (4 hours)</u>
Single kayak	\$10.00		\$25.00
Double kayak	\$15.00		\$35.00
Canoe	\$15.00		\$35.00
Pedal Boat	\$15.00		\$35.00
Inner Tube	\$ 5.00		\$15.00

Rental rates include PFD's for all boats and for inner tubes; paddles are included for kayaks and canoes, and seatbacks are included for kayaks. All rate structures and any changes in user fees must receive the prior written approval of City before becoming effective. Licensee may also charge \$3.00 for every ten (10) minutes overdue beginning after boats are initially ten (10) minutes overdue.

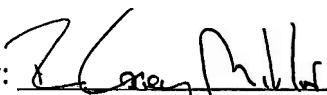
30. Approval Authority. In this License, wherever an act requires approval by or consent of the City, such approval or consent may be obtained from the Director of Parks and Recreation Department, or designee.

31. Governing Law and Enforcement. This License shall be governed by the laws of the State of Texas and shall be performable in Kerr County. Venue for any dispute arising between the parties to this License shall be in Kerr County, Texas

SIGNED and agreed by the authorized representatives of City and Licensee on the dates indicated below.

**KERRVILLE KAYAK & CANOE**

**CITY OF KERRVILLE, TEXAS**

By:   
Corey Miller

By: \_\_\_\_\_  
Jeffrey Todd Parton, City Manager


Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Brenda G. Craig, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Heather Stebbins, Assistant City Attorney

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**AGREEMENT BETWEEN CITY OF KERRVILLE AND KERRVILLE KAYAK & CANOE  
FOR OPERATION OF BOAT, TUBE AND RAFT CONCESSION - PAGE 8 OF 8**